

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:)
)
EDWARD JOSEPH BERMINGHAM and) Bankruptcy Case No. 99-91438
PHYLLIS ANN BERMINGHAM,)
)
Debtors.)
_____)
)
DENIS P. BERMINGHAM, as)
Executor of the Estate of)
Florence M. Irle,)
)
Plaintiff,)
)
vs.) Adversary Case No. 99-9071
)
EDWARD JOSEPH BERMINGHAM and)
PHYLLIS ANN BERMINGHAM,)
)
Defendants.)

OPINION

This matter having come before the Court on a Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt filed by the Defendants on February 22, 2000, and Objection to Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt filed by the Plaintiff on March 28, 2000; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

1. The original Complaint to Determine Dischargeability of Debt was filed on September 9, 1999, prior to the September 13, 1999, deadline for the filing of a complaint to determine dischargeability of debt.

2. The Complaint was originally filed by Plaintiff, Denis P. Bermingham, as the person named as Executor in the Last Will and Testament of Florence M. Irle.

3. On December 21, 1999, Plaintiff was given leave of Court to file a second amended complaint within 30 days as the Court-appointed Executor of the Florence M. Irle Estate, with the understanding that Defendants were reserving the question of whether or not the filing was timely.

4. On January 19, 2000, Plaintiff filed the Second Amended Complaint to Determine Dischargeability of Debt in his capacity as the Court-appointed Executor of the Florence M. Irle Estate.

5. The instant Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt was filed on February 22, 2000, alleging that the Second Amended Complaint to Determine Dischargeability of Debt was not timely filed pursuant to Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Conclusions of Law

Having heard the arguments of counsel and having reviewed the case of In re Meyer, 120 F.3d 66 (7th Cir. 1997), the Court finds that the Second Amended Complaint to Determine Dischargeability of Debt filed with the Court on January 19, 2000, is timely under Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, in that it relates back to the filing of the original complaint. As stated in the Meyer decision:

Rule 4007(c) guarantees a debtor a real fresh start. It defines a time certain when creditors may no longer come claiming that the debtor defrauded them and that certain debts should be non-dischargeable. After the 60 days are over, all the demands for non-discharge that can be made, have been made. The debtor can relax. The force of Rule 4007(c) therefore should fall first and foremost on whether a complaint was filed against a specific debt, not so much on who makes the complaint. Here, Commercial Finance's timely filing put Meyer on notice. Meyer knew that some creditor in a daisy chain would contest the discharge of the \$3 million-plus default judgment. The purpose of Rule 4007(c) had thus been served, and the 60-day rule satisfied.

The decision in Meyer is further supported by Rules 15 and 17 of the Federal Rules of Civil Procedure, made applicable to bankruptcy proceedings by Rules 7015 and 7017 of the Federal Rules of Bankruptcy Procedure, allowing the substitution of a real party in interest where it is found that a complaint was originally filed by an individual or entity that is not the actual real party in interest. That is what has occurred in this instance. The Court finds that the Meyer case is on point and provides the authority for this Court to deny the Motion to Dismiss Second Amended Complaint to Determine Dischargeability of Debt.

ENTERED: March _____, 2000.

GERALD D. FINES
United States Bankruptcy Judge

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Defendants.)

O R D E R

For the reasons set forth in an Opinion entered on the _____ day of March 2000;

IT IS HEREBY ORDERED that:

A. The Motion to Dismiss Second Amended Complaint to Determine

Dischargeability of Debt is DENIED; and,

B. Defendants will be granted a period of 14 days from the date of this Order to
file an appropriate answer.

ENTERED: March _____, 2000.

GERALD D. FINES

United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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